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AUTHOR(S):

Piyada Chonlaworn

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Contesting Law and Order: Legal and Judicial Reform in Southern Thailand in the Late Nineteenth to Early Twentieth Century

Piyada Chonlaworn*

This paper examines legal and judicial reform in Thailand (then Siam) imposed in the southern Malay provinces, once a sultanate kingdom of Pattani, in the 1890s and 1910s. Legal and judicial reform was one of the three main reforms Siam imposed countrywide at the end of the nineteenth century as an attempt to modernize the country and defend it against Western colonial powers. However, Siam's rule and reform in the Malay region, especially during the reign of King Chulalongkorn, is viewed by recent studies as colonial modernity in itself. These measures included the appointment of a Siamese commissioner in the Malay region, the enforcement of Thai law, and Siam's endeavor to preserve local practices such as Islamic family law and courts, which resembled those of the British and Dutch East Indies. While the notion of Siam's inner colonialism is not entirely wrong, this paper argues that there is also another side of the coin that should be considered especially when looking from legal and judicial perspective. Right after a new regulation was imposed in 1901, it was clear that local people were ready to make use of the new judicial system. This is partly because the new system, regardless of its shortcomings, gave local people, including Malay ruling elites, opportunities to file cases against their enemies or demand justice.

Keywords: Pattani, Siam, Malay, Islamic law, *Tok Kali*, judicial order, colonization

I Introduction

The nineteenth century was a period of transition in most parts of the world in a move from the traditional state to a modern nation-state under a clearly defined territory. Thailand, then Siam,¹⁾ was no exception. Throughout the nineteenth and early twentieth

* ปิยะดา ชลวร, College of Policy Science, Ritsumeikan University, 56-1 Toji-in Kitamachi, Kita-ku, Kyoto 603-8577, Japan
e-mail: u2piyada@yahoo.com

1) The terms "Thailand" or "Thai" are used as the country name or when referring to geographical setting, language, and current politics. "Siam" (and "Siamese"), as the former name of Thailand, is used mainly in a historical context.

century, especially the “long decade of the 1890s,” Siam had experienced a series of political reforms and modernization as an attempt to resist the European colonialism that was sweeping across Southeast Asia. This also brought about tremendous changes to Siam’s southernmost region where the majority of the people were Malay-speaking Muslims.

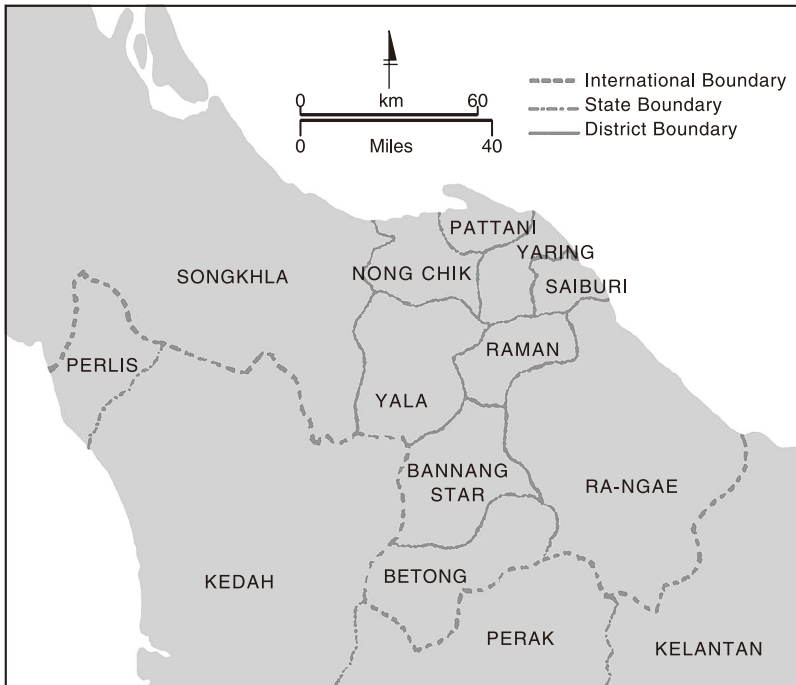
Situated in the south of Thailand and northeast of the Malay Peninsula, Pattani, or Patani in Malay spelling, has long been an area bridging the Buddhist-nominated Thai and Malay-dominated Muslim worlds. It was once an autonomous sultanate state, prospering from maritime trade in the sixteenth and seventeenth centuries, until it was incorporated into Siam in the early twentieth century. The kingdom covered the area of three of the southernmost provinces of present-day Thailand: Pattani, Yala, and Narathiwat, where violence by Muslim insurgents has escalated since 2004.

Historically, Pattani and nearby Malay states such as Kedah and Kelantan were in a loose suzerain relationship with Siam since around the sixteenth century, symbolized by a triennial tribute of the *bunga mas* or ornamental tree and flower made of gold and silver.²⁾ When Siam’s power was contested, these vassal states often revolted and asserted their independence from Siam. After a series of rebellions by Malay rulers near the turn of the nineteenth century, Pattani was defeated by a resurgent Siamese state and in 1810 was subdivided into seven provinces. It was renamed “the seven Malay provinces” (hereafter “the seven provinces”), comprising of Tani (capital of the former Pattani kingdom) as the headquarters, and Nong Chik, Saiburi, Yaring, Yala, Raman, and Ra-Ngae (Phan-ngam 1976; Koch 1977, 70) (see Map 1). Each province had its own ruler who was allowed to exercise his authority under the supervision of Siam.³⁾ Siam, however, asserted indirect control through the recognition and sometimes appointment of local rulers; this area was also placed under the supervision of Songkla, a provincial headquarters of Siamese government in the south.

The political situation in and around the seven provinces became more intense when the British expanded their influence over the Malay Peninsula in the late nineteenth century. As part of a provincial administrative reform initiated nationwide in 1892, Siam

2) Expenses for making *bunga mas* were covered by levying taxes on the Malay people in the seven provinces twice every five years. This was called the *bunga mas* tax. The money was supposed to be spent on making ornamental flowers but it is reported that sometimes the raja took a large part of it for his own use (Phan-ngam 1976, 59).

3) Most of the rulers in the seven provinces were of Malay origins. However, resistance from Malay rulers was intense in the first three decades of the nineteenth century, and those who revolted against Siam were replaced by pro-Siam officials. After a revolt in 1830, Malay rulers of Pattani and Yala were temporarily replaced by an ethnic Chinese from Songkla, whose family had ruled over another Malay province called Yaring since the 1790s (Phan-ngam 1976, 30–33).



Map 1 The Seven Provinces (Former Pattani Kingdom)

Source: Kobkua (1988, 160).

saw the need to impose reforms in the Malay region as well. In 1901, the seven provinces were regrouped into one administrative unit called the “Area of Seven Provinces” and placed under the control of an Area Commissioner who resided in Tani and who came under the supervision of the Superintendent-Commissioner of Nakornsri thammarat (see Fig. 1).

In the same year, Siam issued a set of “Regulations concerning the Administration of the Area of Seven Provinces,” which aimed at increasing centralized Siamese control over the region. Judges (who were mostly Siamese), deputy governors, and revenue officers were appointed to assist local rulers. Treasuries of the Area were handled by the Revenue Department in the same way as the rest of Siam. As compensation, the rulers and Malay nobilities were given fixed but adequate pensions (Nantawan 1976, 201–203). Needless to say, Siamese reform bred resentment and resistance among the Malay rulers.

In 1906, the position of sultan was abolished and the seven states were reorganized as Monthon Pattani (Pattani Circle). Triennial tribute to Bangkok being abolished, the seven provinces were amalgamated into four provinces: Pattani, Yala, Ra-Ngae, and

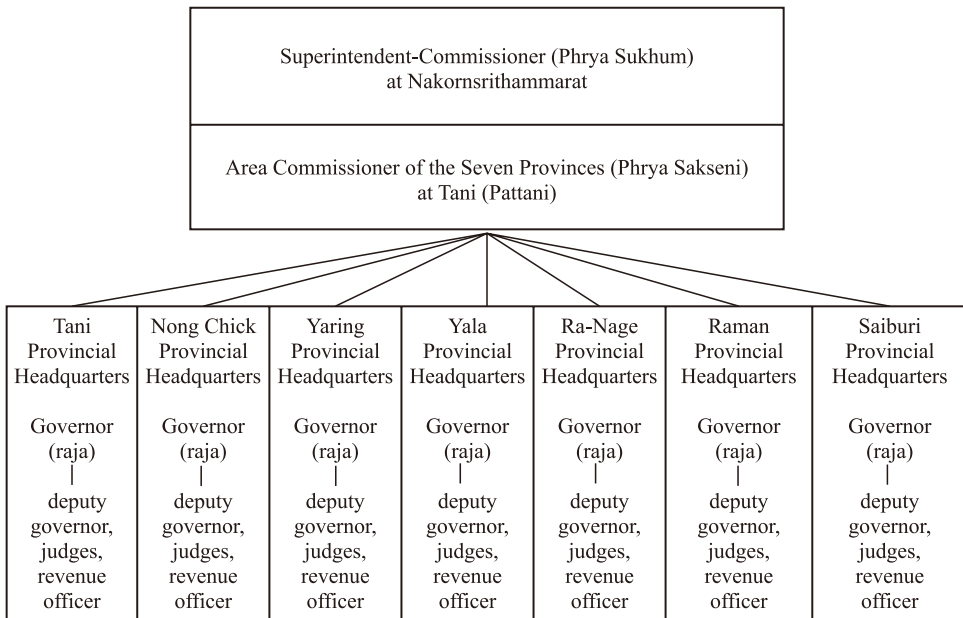


Fig. 1 New Administrative Structure in the Siamese Malay Provinces, 1896–1906

Source: Adapted from Phan-ngam (1976, 216).

Saiburi, each with its own commissioner instead of an imposed sultan. This reorganization finally put an end to the position of Pattani as a sultanate state, marking the beginning of the integration of the Malay states into Siam. Not long after, in 1909, the Anglo-Siamese treaty was signed. As a result, Siam had to relinquish Kedah, Perlis, Kelantan, and Trengganu to British Malaya in order to keep the newly created Monthon Pattani under Siamese territory (*ibid.*, 203–204). The splitting of the Pattani kingdom and the assertion of Siamese control over the area in the nineteenth century is said to be the root of Malay nationalism and political conflict between the Thai government and the Malay south, which in the past decades has turned into an ethno-religious cleavage between Buddhist Thai and Malay Muslims (Harish 2006; Thanet 2008).

Consequently, studies on Thai-Malay relations have so far focused on political tensions between the two parties. Pattani nationalists often stressed the suppression of Thai authority and the struggle of the Malays for justice.⁴⁾ Historically, Siam’s expansion

4) For example, Ibrahim Syukri, the author of *History of the Malay Kingdom of Patani* (2005 [1985]), who greatly influenced later Malay scholars in producing works of a similar discourse (such as Bang-nara 1976 [2008]; Arifin *et al.* 2000). This discourse has been seized upon by Malay-Muslim nationalists and separatists from the 1950s onwards in their drive to gain autonomy for Pattani. On ↗

of its southern periphery, which intensified in the reign of King Chulalongkorn, is seen as a pursuit of imperial expansion rather than as a measure to assure Siam's independence or survival from colonial threat (Koch 1977, 70–71; Loos 2004–05, 7–8; 2006, 70–88). Loos (2006, 88) argues that the enforcement of Thai law and the establishment of an Islamic family court in Greater Pattani in the early twentieth century, modelled after the British, were the most important displays of Siamese colonial modernity.

While the notion of Siam as a colonial aggressor is not entirely wrong, there are other elements that should be examined more closely with regards to Thai-Malay relations and to the history of Pattani *per se*. This paper focuses on the legal and judicial reform Siam imposed in the southern Malay region between 1896 and 1906. This period was probably the most crucial period for both Siam and Malay ruling elites in the political sense, especially with the growing influence of the British in the Malay Peninsula. It examines political structures and judicial practice in the seven Malay provinces prior to the Siamese reform, and how these changed after the legal reform of 1901.

Historical sources regarding law and jurisdiction in the seven provinces are mainly composed of Thai documents since indigenous data on this subject, especially in the period studied, hardly exists. Most of these documents are official reports sent by Siamese local officials to the Ministry of the Interior (Prince Damrong) and King Chulalongkorn, who sometimes sent back comments and suggestions. Siamese officials during the era of modernization often viewed the peripheral region with bias, revealing their imperial perspective. However, among the Thai archives are documents on court cases, letters, and petitions from local elites, translated from Malay to Thai, which shed light on some aspects of Malay society and local politics. This paper will make use of these documents to examine the first 10 years of the reform.⁵⁾

II Law and Society in the Siamese Malay States in the Pre-reform Period

In order to understand the Siamese rationale for reform, we need to understand the political structure of the Malay provinces, how traditional law and jurisdiction functioned in the society, and why the Siamese found it problematic.

↘ the other hand, from the Thai perspective, Pattani has long been seen as part of Siam, and direct control of Siam through political and economic reform as a successful endeavor by Siam to build a unified nation and save her territory from foreign expansion (Phan-ngam 1976; Somchot 1978). The role of royal elites like Prince Damrong Rachanuphab and Phrya Yommarat in incorporating and modernizing the south is highly recognized by conventional Thai scholars (see Maneeratana 1977).

5) Documents concerning Pattani and other southern provinces in this period are not available for public access. Special permission was given to the author to use these materials.

Political Structure and Administrative Practice

Political and social structure in the traditional Malay states is probably the least studied subject in Malay studies. This is worse for Pattani, which fell out of the orbit of concern of British colonial officers; data are scattered and we only have very rough knowledge about it. What we do know is that the sultan or raja, like in the other states in traditional Southeast Asia, occupied the highest position. A British personnel wrote in his 1895 report of the raja of Ra-Ngae, the biggest province close to Kelantan, that he is “supreme in his state, and his word is law.”⁶⁾

The raja supervised an administrative department called *krom-karnmuang*, staffed by several high-ranking officials called *Sri tawan kromakarn*.⁷⁾ The highest official in the *krom-karnmuang* was the deputy governor, who assisted the raja and replaced him when he was absent, followed by the *datok*, who acted as judge in civil and criminal cases in the city. The *datok* also supervised district headmen called *mae kong* or *tok kwaeng*. Apart from the *datok* who exercised jurisdiction duty, there were also *tok kali* in charge of religion and Islamic law, deputy *tok kali* called *tok kiri*, as well as revenue officers and officers taking care of *bunga mas*, or tribute-sending, to Bangkok. The hierarchical relations of these officials are far from clear.

At the district and village level, the *mae kong* or district headman was entrusted with important duties ranging from assuring social order in his village, dealing with conflicts in small cases to collecting *suai* tax, or tax in kind. Below the *mae kong* was the *penghulu*, a Malay term for village headman, who was the *mae kong*'s assistant. In big villages there could be more than one *penghulu*. There were also revenue officers called *kwaeng*, who collected land taxes and dealt with land disputes; *jaa* or *tokjo*, policeman answerable to the *mae kong*; and *nai-dan* or custom officer in charge of collecting duties to be sent to the raja (Phan-ngam 1976, 49–52; Somchot 1978, 72–75) (see Fig. 2).

It is not clear whether this administrative structure was applied in the same manner in all the seven provinces. In Ra-Ngae, for example, the raja had five deputies: *mekong* Sulong who held the highest position next to the raja, *datok* Basong, *mekong* Betong, Hadji Kuchang, and Pah Chu Bujal. There was another important official called “Captain China”—Lim Keo Min, who owned all the farms in the country and collected all kinds of taxes and revenue in Ra-Ngae. Lim reportedly paid the raja \$1,260 a year.⁸⁾

6) “Reports and Particulars of the Legeh Concession” by A. D. Machado in 1895 (with Forward by Mr. J. B. M. Leech, Managing Director of Liang Exploration Company, Limited and government officer in charge of the Kinta district of Perak in the Malay States). British National Archives, F.O 69/276.

7) Literally “department of politics” in Thai.

8) “Reports and Particulars of the Legeh Concession” by A. D. Machado in 1895 (with Forward by Mr. J. B. M. Leech, Managing Director of Liang Exploration Company, Limited and government officer in charge of the Kinta district of Perak in the Malay States). British National Archives, F.O 69/276.

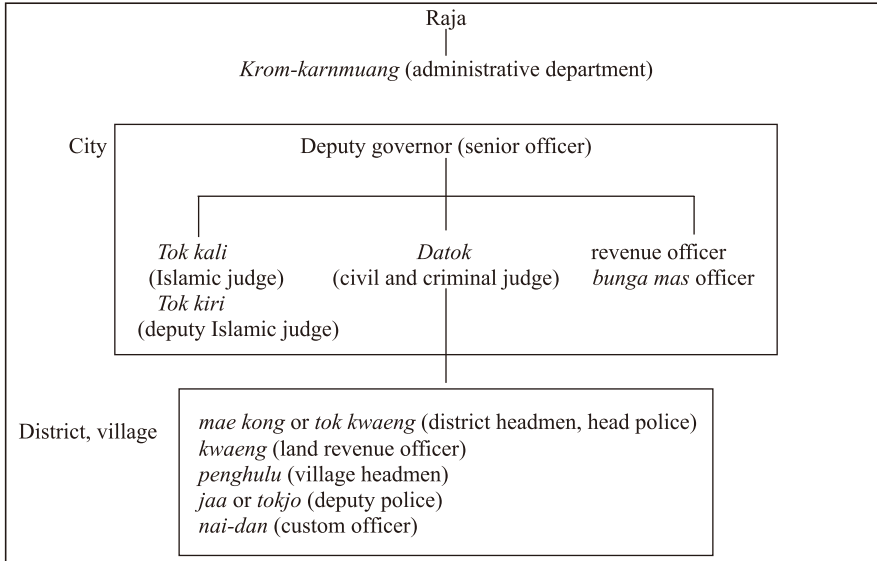


Fig. 2 Political Structure in Pattani before the 1901 Reform

Source: Adapted from Somchot (1978, 72–75).

Somchot has pointed out some problems in the political structure of the seven provinces. First, the duty of these officials often overlapped as there was no functional division of labor (Somchot 1978, 74). *Tok kali*, *datok*, and *kwaeng* all had the juridical authority to hear cases, and both *datok* and district headmen (*mae kong*) could collect taxes as land revenue officers (*kwaeng*). Second, and more importantly, the appointment and dismissal of these officials was decided by the raja alone, which gave him supreme power over all matters, often resulting in despotic rule (*ibid.*, 75). It might, however, be premature to pinpoint the problems from the fragmented data we possess. Duties may seem overlapping, but it might have been a division of labor between the city and outlying districts.

Legal and Judicial Practice

What kind of law was applied in the seven provinces before the reform, how disputes were settled, and how crimes were punished are questions difficult to answer since we only have scattered information. First, regarding law and punishment, it seems that Islamic law was originally applied in the seven provinces. Then in the early nineteenth century, when the Siamese expanded their control in the southern Malay provinces, Siamese law was introduced. Later on, when the Chinese population increased in the region, Chinese law was also applied for the Chinese (Phan-ngam 1976, 52–53). In some

provinces where Siamese influence was strong, for example Nong Chick, only Siamese law was applied, while in other provinces such as Pattani, Raman, and Ra-Ngae, both Siamese and Islamic law were applied, and there were *kali* or Islamic courts in most of the provinces (Somchot 1978, 131). According to Engel (1978, 19–20), it should be noted that even though Siamese law was promulgated by early Siamese kings, it was not strictly observed in the provincial areas since there were traditional ways of handling conflicts, such as ordeal and oath, witchcraft proceedings, mediation by elders or people of high status, and formal judicial proceedings conducted by local rulers. Regarding Malay customary law or *adat*, while other Malay states such as Malacca, Kedah, and Pahang had their own texts, Pattani did not seem to have one. According to Hooker (1972, 76–81), there are some references to laws in Pattani in the Malacca Maritime Laws, which concern rules and punishment on ships and other miscellaneous laws.⁹⁾

When Phrya Sukhumnawinit (or Phrya Yommarat), Superintendent Commissioner of Nakornsri Thammarat, visited Pattani in 1896 in preparation for administrative reform, he made some observations about law and jurisdiction there. According to his report to Bangkok, first, two courts existed in this big province—the Commissioner Court and the Governor (raja) Court—but there was no regulation on which cases should be sent to which court, causing overlapping in judicial procedure. In outlying provinces such as Raman and Ra-Ngae, there were no courts or trials being held at all. Second, there were no regulations on when Thai or Islamic law should be applied. In some cases, Siamese law was applied while in other cases, “religious and customary law” of the *khaek*¹⁰⁾ was applied, causing difficulties for judges and litigants. He added, “If it is a dispute between the Thais and the Chinese, Siamese law was usually applied. If it is a dispute among *khaek*, sometimes Siamese law was applied, sometimes *khaek* law was applied.¹¹⁾ Those who applied Siamese law usually lived in or near the city, while those in rural areas normally applied *khaek* law, which means that they don’t bother to appeal. So it means they can choose the law that suits them.”¹²⁾

9) *Adat*, according to Hooker, in its wider sense means Malay tradition, while also meaning law. With the arrival of Islamic influence in the Malay region, *adat* law was adjusted to the new situation and incorporated basic Islamic teaching. The penetration of Islamic law varied from district to district. *Adat* law mainly functioned as a code of conduct and was often called on in land disputes. Unlike in other Malay states, it is far from clear to what extent *adat* law was applied in Pattani. For more on *adat* law, see Hooker (1972; 1986).

10) *Khaek* is a Thai word generally referring to people from India, the Middle East, and the Indonesian archipelago. Here it refers to Malay people in southern Thailand.

11) *Khaek* law here means Islamic law.

12) Explanation from Phrya Sukhumnawinit to Prince Damrong Rachanuphab regarding court regulations in the Malay provinces, February 6, R.S 116 (1898). Bangkok National Archives, Rama 5 Mahathai (hereafter abbreviated as N.A., R 5 M), 43/16.

Like elsewhere in traditional Southeast Asia, there was no professional judge of a Western standard. Disputes at village level were usually first settled by mediation or negotiation. If agreement could not be reached, or in cases of crime, the village headmen such as *mae kong* or *penghulu* of each community would act as a judge. Appeals to the raja of each province could be made, but this would have been rare due to the inconvenience of traveling in those days. As for the Islamic judges or *tok kali* (or *kadi*, *kathi*), traditionally the raja of each province appointed two to four *tok kali*, who heard cases and delivered verdicts. However, Phrya Sukhum observed that since there was no written penal code of Islamic law, *kali* judges in each province tended to have different stances and decisions were totally arbitrary (Phan-ngam 1976, 299). According to the report of a Siamese official in 1902, a similar case was decided differently according to different judges. As a result, some litigants asked the judge to apply Siamese law.¹³⁾

Another concern for the Siamese was the fact that raja had absolute power in jurisdiction and often judged in an arbitrary manner.¹⁴⁾ If it was a case that directly concerned the raja, such as an affair of adultery involving his wife, the raja would order the suspect to be killed without investigation, as in the case of the raja of Saiburi province, who killed his minor wife and her lover, or the son of the raja of Yala, who killed his wife and her lover. Siam opposed this practice and ordered Phrya Sukhum to judge these special cases, as we will see below (*ibid.*, 301–303). Besides, because of their absolute power, local rulers often usurped jurisdiction over any profitable case of inheritance and marriage that should have fallen within the purview of Islamic judges (Somchot 1978, 169; Loos 2006, 91). For example, court fees paid by litigants meant to be sent to Mecca as a donation often ended up in the pockets of the rajas (Phan-ngam 1976, 300).

From the observation of Phrya Sukhum above, it is obvious that the Siamese viewed legal and judicial matters in the seven provinces as confusing and lacking in clear regulations, all of which called for “reform.” This perspective was not so different from the imperialist view of British officials towards other Malay states.¹⁵⁾ The biggest concern for Siam, however, was probably the juridical power of local rulers to execute their sub-

13) Report from Prince Damrong Rachanuphab to King Chulalongkorn, December 3, R.S 121 (1902). N.A., R 5 M, 49/05.

14) Report from Prince Damrong Rachanuphab to King Chulalongkorn, August 9, R.S 123 (1904). N.A., R 5 M, 49/5.

15) For example, William Skeat visited Kelantan in 1899 and observed the juridical practice in Kota Bharu that “there was no code of laws in use in this state. The Malay magistrate claimed to be able to decide all the cases ‘by the light of nature’” (Skeat 1953, 113). Graham also noted that “Malay custom” practiced there, especially that concerning the punishment of crime, was in many ways problematic and should be got rid of (“General report of Affairs in the State of Kelantan for the Year Aug. 1903–Aug. 1904 by W. G. Graham.” British Archives, Foreign Office, 69/265, p. 294).

jects. Phrya Sukhum might have felt that a death sentence for the crime of adultery was too severe, but as Loos points out, Siam's concern was that local rulers should not have that kind of power since it infringed on and challenged the authority of the Siamese king who alone had legitimate control over the life and death of his subjects (Loos 2006, 91).

It can be noted too that the problems faced by the seven provinces in legal and judicial matters were actually not much different from the legal problems the Siamese encountered at that time. Siam at the end of the nineteenth century was also trying to improve its law and jurisdiction: judges were often biased and did not apply the law, cases were often heard at the homes of judges since they received no salary, legal experts were lacking, etc. (Thailand, Ministry of Justice 1992, 23–24).

III New Rules and Regulations

For Siamese bureaucrats at that time, the modernization of legal and judicial matters was one of the most urgent tasks in their attempt to eliminate extra-territorial rights treaties with foreigners. Foreign legal experts were hired to set up legal systems, amend old laws, and institute new ones, and the Ministry of Justice was established in 1892. Civil and criminal courts in Bangkok were put under the jurisdiction of the Ministry of Justice, while provincial courts in the rest of the country remained under the Ministry of the Interior (Thailand, Ministry of Justice 1992, 26–28).

Legal reform in the southern Malay provinces took place not long after it was embarked upon in the rest of the country. The process started with the dispatching of Phrya Sukhum to observe legal practice in the seven provinces and his subsequent proposals of a number of new rules in 1897. The motives behind legal reform have been subject to various interpretations. While most conventional Thai scholars (such as Phan-ngam 1976; Somchot 1978) saw it as a way to “improve” local society by abolishing the bad habits of local rulers and introducing a better modernized system, a recent study by Loos views Siam's legal reform in the south as imperial expansion (Loos 2006; 2010).

Phrya Sukhum might have observed the local jurisprudence in the Malay provinces through the distorting prism of modernity that motivated colonial-style reforms, as Loos (2006, 90–91) points out, but the detail of his proposals is worth paying attention to. Following the Decree of Provincial Court R.S 114 promulgated in 1896, Phrya Sukhum first ordered that the Area Commissioner Court be abolished in order to avoid double filing of cases. A provincial court (*saan muang*) was to be established in each of the seven provinces, and larger provinces could have additional district courts (*saan amphoe*) for

convenience's sake. The highest court, the Area Court (*saan boriwane*), was to be set up in Pattani. Nonetheless, in the early days of the reform, not all provinces had their own provincial court, for example, Nong Chik and Yaring.¹⁶⁾ Court hearing outside the courthouse was no longer permitted except with special permission.¹⁷⁾ Phrya Sukhum also set up a temporary court in Pattani in 1897, open to the public during trials. It was probably the first public court established in the Malay region, consisting of three judges, two of whom were appointed by the raja of Pattani and one by the (Area) Commissioner.¹⁸⁾

Second, regarding the judge, traditionally up to five or six judges were appointed in each province. The new rule reduced the number of judges to three, one of whom must be Siamese. They were also to be appointed by the Area Commissioner and the raja. Verdicts had to be delivered by at least two of the judges, and appeals could be conducted in the Monthon court in Songkla. The number of judges in the seven provinces varied. A relatively big province like Pattani seemed to have had more judges than the other areas. In 1899, for instance, there were four judges there—three Malays and one Siamese. Only two judges were appointed in smaller provinces like Nong Chik and Yala. In Nong Chik, both judges were Siamese while in Yala, one was Malay and the other was Siamese (Skeat 1953, 49–50). District courts in Raman and Ra-Ngae had no judges, so the head of the district often acted as a judge (Somchot 1978, 173).

How to train professional judges was one of the biggest challenges for the Siamese authority. In the early stages of legal reform, it was hard to find legal experts in the capital, let alone in provincial areas. Thus the Area Commissioner of the Malay provinces was given considerable power to oversee the jurisdiction. Apart from appointing Islamic judges, the Area Commissioner was required to give legal and judicial advice to judges and observe their court hearings from time to time. In cases concerning Islamic matters, Islamic law was applied, but the judgment had to be ratified by the Area Commissioner before the final verdict was given, except for petty cases where two out of three judges were allowed to deliver verdicts.¹⁹⁾ That the Area Commissioner was given so much power was a concern for King Chulalongkorn, who warned Phrya Sukhum to choose the

16) Report from Prince Damrong Rachanuphab to the royal secretary of King Chulalongkorn, Prince Sommut Amornphan, regarding the establishment of *kali* court in the seven Malay provinces, August 9, R.S 123 (1904). N.A., R 5 M, 49/5.

17) Report from Prince Damrong Rachanuphab to the royal secretary of King Chulalongkorn, Prince Sommut Amornphan, regarding the establishment of *kali* court in the seven Malay provinces, August 9, R.S 123 (1904). N.A., R 5 M, 49/5.

18) Report from an official to the royal secretary of King Chulalongkorn, Prince Sommut Amornphan, regarding the report from Phrya Sukhumnawinit, May 6, R.S 117 (1898). N.A., R 5 M, 49/28.

19) Rules and regulations regarding courts in the seven Malay provinces drafted by Phrya Sukhumnawinit, February 6, R.S 116 (1898). N.A., R 5 M, 43/16.

appointee carefully.²⁰⁾ Phrya Sakseni, or Naa Bunnag, was appointed to the position at the time of the reform.²¹⁾ Since the appointment of the Area Commissioner greatly reduced the power of the Malay rajas, his authority was often challenged (Phan-ngam 1976).

Another significant change was the law itself. New rules ordered that Siamese law be applied to all criminal and civil cases among people in the seven provinces regardless of their ethnicity or religion. Family disputes among Muslims or with Muslims as defendants would be heard at an Islamic family or *kali* court. Other minor rules called for the building of a prison in each province, and that court fees in both civil or religious courts be collected according to the Thai decree of 1896.²²⁾

After some years of observation and discussion with local judges, a new legal system was formally promulgated in the “Regulations concerning the Administration of the Area of the Seven Provinces R.S 120” in December 1901. This regulation, however, provided only the outline of a new jurisdiction; additional regulations were made later on.

The newly introduced system faced teething troubles, especially in the area of procedures in Islamic courts. As such, Siamese officials often had to hold ad hoc meetings with Islamic judges. Besides, apart from the lack of magistrates as mentioned above, one of the problems that the Siamese authority faced was cases where defendants were relatives or subordinates of indigenous rulers. Since they were influential people, witnesses were often too intimidated to show up at court to testify against these defendants. Siam solved the problem by imposing Siamese law in 1904, which made testifying in court compulsory. If witnesses failed to turn up without a valid reason, they would be detained in jail. When the Siamese implemented this measure, people reportedly started to appear in court as they were more afraid of the law than the influence of the governor.²³⁾

Kali Courts in the Seven Provinces

The most remarkable change following legal reform in the south is probably the establishment and systemization of Islamic family courts called *kali* courts in the seven provinces. *Kali* courts dealt with family affairs such as marital (mostly divorce and adultery) and inheritance cases among the Muslims or cases involving Muslim defendants. *Kali* courts

20) King Chulalongkorn's reply to Prince Damrong Rachanuphab regarding new court rules in the Malay provinces, February 23, R.S 116 (1898). N.A., R 5 M, 43/16.

21) Phrya Sakseni was previously a High Commissioner in Lampang in northern Thailand and probably had no knowledge about Malay culture; it is doubtful that he performed his duty well.

22) Rules and regulations regarding courts in the seven Malay provinces drafted by Phrya Sukhumnawinit, February 6, R.S 116 (1898). N.A., R 5 M, 43/16.

23) Description of court case by Luang Borirakphubon, submitted to Phrya Sukhumnawinit, R.S 123 (1904). N.A., R 5 M, 49/5.



Fig. 3 Courthouse in Monthon Pattani in the Early Twentieth Century

Source: Bangkok National Archives.

probably existed before the reform, but they were systemized and put under Siamese supervision after the reform. It has been pointed out that, along with state courts, the Islamic family court system in the Malay south is the invention of the modern Siamese state (Loos 2006, 88). We should, however, also take into consideration the details of the new system and ask who benefited from it.

The strongest incentive for the Siamese to incorporate Islamic courts was, as stated above, probably to remove the raja's juridical power and shift it to appointed Islamic judges or *tok kali*. However, it should be noted that Islamic judges did not have sole authority to judge cases; they had to hand their verdict to secular judges to co-sign.

What were the new rules in the Islamic courts? First, before the reform, *tok kali* often acted as judges, ruling over cases themselves. Litigants who were not satisfied with the verdict often appealed to the Siamese commissioner or the raja. Under the new system, a case must be heard by more than one *tok kali*, who acted more like the jury rather than the judge. The plaintiff and defendant were given a chance to choose the most appropriate *tok kali* to handle their case. If all the *tok kali* delivered the same verdict, their judgment was final and no appeal would be allowed; if the verdict among the

kali varied, they had to designate one person as head of the jury and decide by vote.²⁴⁾ In principle, cases in the *kali* court could not be appealed, but if the verdict of the secular judge contradicted with the original verdict of the *tok kali*, the plaintiff or defendant could appeal to a higher court in Nakornsrihammarat (Somchot 1978, 169–172).²⁵⁾

The first trial in a *kali* court post-reform was held in Pattani in 1902. The litigants were a pair of brothers who disputed over the inheritance of some land left to them by their father, with the younger brother accusing his older brother of taking away a piece of land that he claimed was rightfully his. Eight *kali* were appointed and the plaintiff and defendant were each required to choose the *kali* they trusted from among the eight. Seven were thus selected, with two of them, chosen by both parties, acting as juries. After calling for witness and interrogation, the court found that the land had been given to the youngest son, so the two *kali* delivered a similar verdict, ordering the older brother to return the land to his younger brother and both of them to share the court fee. According to Phrya Sukhum, the litigants seemed to be satisfied with the fact that they could choose the *tok kali*. The *tok kali* who were requested to try the case complained about the work, but after Phrya Sukhum promised to reward them adequately, they agreed to do so.²⁶⁾

Other new rules ordered that court fees for Islamic courts be charged in the same way as civil and criminal courts. Instead of handing the fees to the raja as before, they would be allotted to *kali* judges as a reward. Phrya Sukhum further proposed that, just like in secular courts, money be given to witnesses who came forward to give their testimony—a move accepted by Islamic scholars (Phan-ngam 1976, 300; Somchot 1978, 169).²⁷⁾ The validity of cases regarding inheritance was also standardized among the provinces. It was agreed by the *tok kali* and *imam* in the seven provinces in 1905 that, to avoid double standards, inheritance cases would be valid for up to one year after the death of the proprietor.²⁸⁾

24) Rules and regulations concerning the establishment of Islamic court, sent from the royal secretary of King Chulalongkorn to Phrya Sukhumnawinit, date not clear, R.S 121 (1902). N.A., R 5 M, 49/5.

25) However, during the reign of King Vajiravuth and beyond, the authority of the *kali* was reduced to the role of religious advisor to the Thai judge, who sometimes ignored the *kali*'s opinion. Thus, unlike during the period of King Chulalongkorn, people relied less on the Islamic family court (Somchot 1978, 214–215).

26) Report from Phrya Sukhumnawinit to Prince Damrong Rachanuphab, November 9, R.S 121 (1902). N.A., R 5 M, 49/5.

27) Report from Phrya Sukhumnawinit to Prince Damrong Rachanuphab, November 11, R.S 121 (1902). N.A., R 5 M, 49/5.

28) Draft of a regulation about inheritance case in Islamic court, R.S 124. N.A., R 5 M, 49/5; Letter of Prince Damrong Rachanuphab to King Chulalongkorn asking for permission to promulgate Inheritance Law in Islamic court, April 20, R.S 124 (1905). N.A., R 5 M, 49/5.

IV Imposition of the Legal and Judicial System

It is hard to evaluate to what extent the new system worked, since we do not have data before the reform to compare with.²⁹⁾ However, some court cases reveal how local people responded to and made use of the new judicial system. Here two court cases will be raised as case studies: a dispute between a Malay man called Nikuan and the raja of Yaring, and an adultery case concerning the wife of the raja of Raman.

Case 1: Nikuan versus the Raja of Yaring

According to a report by the head judge Luang Borirakphuben in 1902, a total of 451 cases were filed in civil courts in the seven provinces (see Table 1), but this number fell to 370 in the following year.

The head judge explained that there were so many cases in 1902 because in that year alone, up to 100 cases were filed by a man called Nikuan and his men in Yaring province against the raja of Yaring.³⁰⁾ The dispute between Nikuan and the raja of Yaring actually started 10 years earlier. In 1893, Nikuan, an apparently wealthy Malay man in Yaring who owned many rice fields, made a petition to the governor of Songkla, Phrya Wichiankiri, who was the head of the seven provinces at that time, that the raja of Yaring had killed his family and servants and had taken away his property. The raja of Yaring counter claimed that Nikuan's servants had trespassed on other people's rice fields and killed his lawyer in a big fight in Yaring city. The governor of Songkla decided to investigate this case and asked Nikuan and the raja to come to Songkla for a trial. Nikuan appeared but the raja of Yaring refused to comply, informing the governor that "[the

Table 1 Number of Cases Filed in Criminal Courts and Civil Courts in the Seven Provinces (1902–04)

| Year | Criminal Court | Civil Court | <i>Kali</i> Court | Total | Source |
|------|----------------|-------------|-------------------|-------|--------|
| 1902 | 191 | 451 | 91 | 733 | 1 |
| 1903 | 256 | 370* | 124 | 750 | 2 |
| 1904 | n.a | n.a | 171 | n.a | 2 |

Sources: 1) Report of court cases from Prince Damrong to King Chulalongkorn, May 27, R.S 122. N.A., R 5 M, 49/5.

2) Description of court cases by Luang Borirakphuben in the Rattanakosin era 121–123. N.A., R 5 M, 49/5.

Note: *In the table of court cases summarized by Luang Borirakphuben in R.S 122 (1903), the number is 369.

29) For example, reports from the head judge of the seven provinces stated that after the systemization of the Islamic courts, there was a rapid increase in the number of cases filed, showing that people preferred the new system to the old one (Report of court cases by Judge Luang Borirakphuben, R.S 121–123 [1902–04]. N.A., R 5 M, 49/5).

30) Description of court case by Luang Borirakphuben, R.S 122 (1903), p. 4. N.A., R 5 M, 49/5.

dispute] between Nikuan and me cannot be solved even if one dies.” From documents about this case, it seems that the raja of Yaring was not on good terms with the governor of Songkla; instead he had connections with a royal family member in Bangkok from whom he probably sought help. Since the raja refused to go to Songkla, the matter was never investigated.³¹⁾

Ten years after this dispute, a civil court was established in the seven provinces. This seemed to have allowed Nikuan to file cases against the raja—which explains the surprising number of cases in 1902. It is not known how the case between Nikuan and the raja was finally settled, or who was in the wrong since both parties seemed equally vindictive. It can be pointed out, however, that in the event of conflicts among Malay elites, a third party like Siam was required to step in to settle disputes, and that those involved in conflicts made use of the new judicial system in order to express their anger or to seek justice.

Case 2: Sadloh versus the Raja of Raman

This case happened in 1904, when the raja of Raman province, Phrya Rattanapakdi (hereafter Phrya Rattana), sued a Malay man called Sedloh whom he suspected of having an affair with his wife. He filed the case in the *kali* court in Raman province. The *tok kali*, consisting of six juries, called for witnesses, all of whom claimed to have no familial relations with either the plaintiff or the defendant. All testified that they saw Sedloh spending nights with Phrya Rattana’s wife on many occasions but did not see them having sexual intercourse. Sedloh, the defendant, denied the accusation, protesting that Phrya Rattana had made a false accusation against him in order to get him into trouble.³²⁾ According to Islamic law, since the two suspects were not caught in the act, they were exempted from the death sentence.³³⁾ The *tok kali*, referring to an Islamic text called *Kitab Kumwa*,³⁴⁾ held that if a man and a married woman were seen sleeping together, punishment would be meted out only to the man. According to the *kitab*, many kinds of

31) Letters and reports about Phrya Yaring and his men robbing Nikuan’s house in Songkla, R.S 112 (1893). N.A., R 5 M, 49/58.

32) Copy of the court case regarding the infidelity of the wife of Raja Ratthanapakdi, no. 188/1947. N.A., R 5 M, 49/81.

33) Siamese and Malay judges who objected to the idea of an execution reached an agreement anyway that adultery cases would be regarded as civil cases, and that the convicted would be punished according to Siamese law, that is, by paying fines only (letter of Prince Damrong Rachanuphab to King Chulalongkorn, August 28, R.S 122. N.A., R 5 M, 49/5). The fine was reportedly two catties (1 catty=596 grams) (report concerning *tok kali* court by Luang Borirakphuben, April 11, 1904. N.A., R 5 M, 49/5).

34) คีตัมคูนวา

punishment could be carried out, such as detention, whipping, or shaming in public, and it was up to the head of the state to decide. The six *tok kali* found Sedloh guilty and ordered him to be detained. They asked Phrya Sukhum to decide on the length of his detention.³⁵⁾ Phrya Sukhum initially planned to move Sedloh to Nakornsriathammarat and detain him there for two years, as he had done with convicts in previous cases involving Malay rulers.³⁶⁾ However, King Chulalongkorn suggested that, in order for the raja to “maintain his dignity and not to lose his authority,” the wrongdoer should not only be put in jail but also punished in some ways.³⁷⁾

Before imprisoning Sedloh, Phrya Sukhum received a royal order to investigate this matter carefully since it concerned the raja and could jeopardize his status. Thus he went to Raman and talked to those involved in the disputes. He discovered that Sedloh, who was charged with preparing opium for the raja’s wife daily, had actually been plotted against by the raja’s wife because Sedloh had left her for another woman, the daughter of a Malay noble. The raja’s wife wanted to take revenge by making her husband sue Sedloh. In spite of this knowledge, Phrya Sukhum could do nothing more than imprison Sedloh and act as a mediator among those involved in this conflict.³⁸⁾

This case has been highlighted because it is very revealing. It demonstrates not only judicial procedure in the Islamic courts immediately after the reform, but also the inside story of Malay ruling elites not easily available elsewhere. This case can be interpreted in many ways. Seen in a colonial context, the formalization of Islamic courts might be interpreted as an intervention of Siam in Islamic family matters. But in this case, it was the Malay ruler who manipulated the newly established court as a way to punish the wrongdoer. Whatever the result was, it is clear that Sedloh was actually the victim of a jealous woman. The real winner in this case was probably the wife of the raja who successfully managed to “punish” Sedloh through the legal process.³⁹⁾

35) Report of *tok kali* court in Raman to Phrya Sukhumnawinit, June 17, R.S 123 (1904). N.A., R 5 M, 49/81.

36) Letter from Prince Damrong Rachanuphab to King Chulalongkorn, no date. N.A., R 5 M, 49/81.

37) Letters from King Chulalongkorn to Prince Damrong Rachanuphab concerning the punishment of Sedloh who committed adultery with the wife of Raja Rattanapakdi, May 1, R.S 123, and May 27, R.S 123 (1904). N.A., R 5 M, 49/81.

38) “Records concerning the wife of Raja Rattanapakdi committing adultery” by Phrya Sukhumnawinit, June 22, R.S 123 (1904). N.A., R 5 M, 49/81. The daughter of a nobleman, the raja’s wife reportedly sold all her belongings in order to live with Sedloh and refused to go back home to her father. Phrya Sukhumnawinit had to persuade her to do so.

39) According to Phrya Sukhum, it appears that the wife of the raja of Raman did not want Sedloh to be executed. She reportedly visited Sedloh after he was jailed, proposing to him that if he went back to her, she would help him out of jail (“Records concerning the wife of Raja Rattanapakdi committing adultery” by Phrya Sukhumnawinit, June 22 R.S 123 [1904]. N.A., R 5 M, 49/81).

Concluding Remarks

Studies on Thai-Malay historical relations have been controversial since it very much depends on which angle one takes—the Siamese authorities who saw the need to reform and modernize, or the Malay rulers who viewed Siam as a colonial aggressor. These differences will probably never end as long as different historical perceptions between Thais and Malays remain and continue to be dominated by political and ethno-religious cleavages between the two parties. But at the same time, we cannot neglect the essence of the reforms and changes brought about by the Siamese authorities, as well as the socio-political circumstances in Malay society at that time.

Legal reform Siam imposed on the seven Malay states might be seen as a colonial modernity, but if we look in detail at court cases, at least those conducted immediately after the reform, it can be argued that the changes in judicial procedures benefitted, to some extent, those involved, such as Islamic judges and litigants, since it reduced the judicial power of local rulers and prevented them from abusing their power, whether intentionally or not. Moreover, if we take into consideration local politics within Malay society, as demonstrated by the case studies above, it is notable that when conflicts occurred among Malay elites, the intervention of a third party like Siam was needed. Likewise, when civil and criminal courts were set up, it gave people recourse to the judicial system; they were ready to make use of the new judicial system to confront their enemies or to demand for justice. Therefore when discussing Thai-Malay or Thai-Pattani historical relations, the notion of inner colonialism alone might not be enough; local politics and the conflict of interest among ruling elites within Malay society should be taken into consideration as well.

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